

TABLE OF CONTENTS

I.	ADJUSTMENTS MUST BE MADE TO THE POWER PURCHASE OPTION (PPO) SO THAT PPO CUSTOMERS PAY IMBALANCE CHARGES THAT REFLECT THE ACTUAL COSTS BORNE BY THE UTILITY AS TRANSMISSION PROVIDER FOR THOSE CUSTOMERS	1
II.	ILLINOIS POWER SHOULD INCREASE THE AMOUNT OF TIME FOR CUSTOMERS TO CHOOSE DELIVERY SERVICES	3

ARGUMENT

I. ADJUSTMENTS MUST BE MADE TO THE PPO SO THAT PPO CUSTOMERS PAY IMBALANCE CHARGES THAT REFLECT THE ACTUAL COSTS BORNE BY THE UTILITY AS TRANSMISSION PROVIDER FOR THOSE CUSTOMERS.

ComEd's PPO has become one of the dominant "unbundled" product choices for delivery services customers in ComEd's service territory. (See Unicom Energy Exhibit 1.) Unicom Energy, Inc. competes as vigorously with the PPO as it does with other ARES. The problem is not with competition, it is with the PPO rate design which serves as the point of competitive interaction between ARES and the regulated utility. Unicom and other ARES pay charges or receive credits for hourly Energy Imbalance Service. The amount of the charge or the credit is based on the hourly price for energy. ComEd bills ARES monthly for all transmission charges, including Energy Imbalance charges or credits. (ComEd Open Access Transmission Tariff, Section 7.)

In a competitive world, the manner in which that charge or credit gets allocated, if at all, to customers would be decided by competition among ARES for energy customers. Some customers may want energy imbalance "insurance." In return for a premium payment, the insurance would insulate the customer from energy imbalance risks. Other customers may wish to absorb the risk and pay or receive energy imbalance charges or credits. Yet again, other customers may want a hybrid of the two. Ultimately, customers should be able to decide the manner in which energy imbalance risk will be distributed, and the terms and conditions that govern the risk allocation.

ComEd's PPO product distorts that process. The PPO clearly does not allocate the hourly cost or credit for Energy Imbalance Service to PPO customers. Nor does the PPO provide a fee-based insurance product. Rather, the PPO provides a kind of energy imbalance insurance

to the customer at no additional charge. ComEd's PPO customers pay a single price (the Market Value of Energy) for all of the energy that they consume, whether that energy is within their scheduled demand or not. PPO customers also pay a miniscule "penalty" charge that is based on 1997 test year data. Neither the "penalty" nor the Market Value of Energy has any correlation to the charges or credits issued under Section 4A of the OATT. ARES must not only compete against a utility-subsidized product, but, more importantly, the PPO rate design effectively eliminates the market-based risk allocation process that can and should take place.

Staff believes that "it is immaterial whether the net revenue from Energy Imbalance Service is accounted for as a component of delivery service charges or as a component of the market value when its is included as a credit within the transition charge." (Staff Initial Brief at 34.) Staff further opines that it is "almost as immaterial whether the transition charge adjustment for these net revenues is performed every year or once per delivery services rate case." (*Id.*) That might be correct if we were applying traditional utility economics and rate principles. Under those principles, the operative question is whether the utility is recovering its costs of service. But the Electric Service Customer Choice and Rate Relief Law of 1997 has changed all of that. The Commission is now charged with the responsibility of "promot[ing] the development of an effectively competitive electric market that operates efficiently and is equitable to all consumers." 220 ILCS § 5/16-101A (d). Because the PPO subsidizes risk insurance for Energy Imbalance Service, it impairs rather than promotes competition. It is no longer enough to say that the PPO meets the traditional rate principles, we must ask whether and how it affects competition.

The PPO's effect on competition has been substantial. The PPO has become the market leader in part because of the price distortions caused by the improper capture of Energy

Imbalance Service charges. Despite requests from this Commission, the utilities have not changed their tariffs to lessen the impact of imbalance charges on customers that obtain power from ARES. While this Commission may not have the jurisdiction to order changes to the utilities' OATTs, it does have jurisdiction over the PPO. It is only fair that the utilities be required to treat their customers in the same manner that they treat customers of competitive suppliers.

Illinois Power and ComEd suggest that Energy Imbalance Service charges and credits will net to zero over time and as a consequence, we should not be concerned about how the charges or credits are collected. If that is true (and the only evidence on Energy Imbalance Service charges and credits in the record appears to suggest that it is not (Unicom Energy Exhibit 1)), then it is difficult to see why ComEd and Illinois Power resist passing the charge and credits on to customers. The simple solution is to assess the customer with the costs and credits that the customer incurs. If the costs and credits will net to zero, then the utility and the customer should not care.

ComEd and Staff also argue that the manner in which Energy Imbalance Service costs or credits are assessed under ComEd's PPO is a delivery services issue that cannot be considered in this proceeding. In fact, however, ComEd has filed a petition seeking an order "under Article IX and Section 16-112 of the Act approving the implementation of tariffs, to be effective May 1, 2000, incorporating an alternative "market based" methodology which would replace the NFF's market value determinations for ComEd's delivery services customers." (ComEd Initial Brief at 2.) Among the tariffs for which ComEd sought approval was ComEd's new Rider PPO (Market Index). The PPO (Market Index) tariff is clearly at issue in this proceeding and Unicom Energy

is unaware of any procedural rule or law that would prevent the Commission in this proceeding from recommending the changes that Unicom Energy proposes.

It should be underscored that Unicom Energy is not asking for a counter-subsidy by boosting the Market Value of Energy. Rather, Unicom Energy proposes a simple adjustment to the ComEd's Rider PPO (Market Index) that would pass actual imbalance charges and credits on to PPO customers in proportion to the customer's contribution to total charges or credits. Configured in that manner, ARES would be able to compete directly with the PPO and competition, not the PPO tariff, will determine how and in what manner Energy Imbalance Service is offered to end-use customers.

II. ILLINOIS POWER SHOULD INCREASE THE AMOUNT OF TIME FOR CUSTOMERS TO CHOOSE DELIVERY SERVICES.

Unicom Energy has urged the Commission to recommend changes to Illinois Power's tariffs that would give customers who are considering delivery services sufficient time to make an informed choice.¹ Unicom recommended a single change to the Illinois Power tariffs that would have Illinois Power sample its data sources and publish Market Values thirty days earlier than it originally proposed. Delivery services customers would then have a minimum of about forty days in which to decide whether to select delivery services based on the published Market Values. Unicom Energy's modification would give customers and suppliers enough time to evaluate offers and strike deals. (*David Braun, Unicom Energy, Inc.*, Direct Testimony at 8.)

Illinois Power is unwilling to budge. Instead Illinois Power resurrects its "mortgage rate" analogy and complains that extending the window will expose Illinois Power to "an inordinate share of the risk of price changes." (Illinois Power, Initial Brief at 30.) In their initial briefs,

¹ The Attorney General and CILCO agree that the Illinois Power election window is too small. (People of the State of Illinois, Initial Brief at 13 ("IP's twelve month method provides precious little time to make an important decision."); Central Illinois Light Co., Initial Brief at 5 ("[T]wo weeks is

Unicom Energy, and CILCO, demonstrated the many ways in which Illinois Power's mortgage rate analogy is flawed. (Unicom Energy, Initial Brief at 5 fn. 1; Central Illinois Light Co., Initial Brief at 5.) Those arguments amply demonstrate the fallacy of the analogy and do not need to be repeated. Similarly, Illinois Power's complaints about undue risk were also refuted by Unicom Energy in its Initial Brief. In a nutshell, Illinois Power claims, but has not proven, that it will experience greater adverse risk if the election window is extended. It may or it may not. We just don't know, and it may not matter because Illinois Power's current tariff structure already incorporates the risk of which it now complains.

The development of competition in the Illinois Power service territory is proceeding at a glacial pace. Unicom Energy's modest modification to Illinois Power's tariffs might increase the chances that Illinois Power customers will have a reasonable opportunity to analyze the Market Values of Energy, examine the contract offers from ARES, and make a choice. The Commission should condition approval of the Illinois Power tariffs on adoption of Unicom Energy's proposed extension of the delivery services election window.

Respectfully submitted,

UNICOM ENERGY, INC.

By:  _____
One of its Attorneys

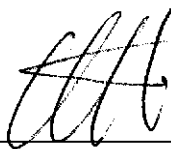
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insufficient time for the customer or supplier to examine the numbers, negotiate a contract and proceed through businesses decision making channels.”)

CERTIFICATE OF SERVICE

I, Daniel D. McDevitt, an attorney with the law firm of Gardner, Carton & Douglas, certify that I have this 22nd day of November, 2000 served copies of the foregoing Reply Brief of Unicom Energy, Inc. by electronic mail upon the persons listed on the attached Service List.

A handwritten signature in black ink, appearing to be 'DDM', is written over a horizontal line.

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY

Petition for expedited approval of implementation
of a market-based alternative tariff, to become
effective on or before May 1, 2000, pursuant
to Article IX and Section 16-112 of the Public
Utilities Act.

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) Docket Nos. 00-259,
) 00-0395, 00-0461 (Cons.)
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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON

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Docket Nos. 00-0259,
00-0395, 00-0461 (Cons.)

NOTICE OF FILING

TO: Illinois Commerce Commission
Attached Service List

PLEASE TAKE NOTICE that on November 22, 2000, we filed with the Illinois Commerce Commission, the attached Reply Brief of Unicom Energy, Inc., a copy which is hereby served upon you.

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